

SERVICE DATE – FEBRUARY 9, 2017

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36068 (Sub-No. 1)

THE INDIANA RAIL ROAD COMPANY—TRACKAGE RIGHTS EXEMPTION—CSX
TRANSPORTATION, INC.

Digest:¹ This decision authorizes the expiration of certain Board-approved rights by one carrier to operate over the lines of another carrier, even though such rights typically continue indefinitely.

Decided: February 3, 2017

On September 29, 2016, The Indiana Rail Road Company (INRD) filed a verified notice of exemption in Docket No. FD 36068 for trackage rights under the class exemption at 49 C.F.R. § 1180.2(d)(7) and simultaneously filed a petition in this sub-docket to partially revoke the exemption to allow the trackage rights to expire on December 31, 2017. Notice of the exemption in Docket No. FD 36068 was served and published in the Federal Register on October 14, 2016 (81 Fed. Reg. 71,160), and became effective on October 29, 2016. This decision addresses INRD's petition to partially revoke the exemption.

As explained by INRD in its notice of exemption in Docket No. FD 36068, pursuant to a May 15, 2008 trackage rights agreement and two subsequent supplements to that agreement dated as of August 1, 2009, and November 20, 2009, INRD holds trackage rights over a line of railroad of CSX Transportation, Inc. (CSXT) from Sullivan to Carlisle and Oaktown, Ind.² The purpose of these trackage rights is to allow INRD to handle unit coal trains from mines at Carlisle and Oaktown to specified destinations on INRD or other railroads with which INRD interchanges.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² See Ind. Rail Rd.—Trackage Rights Exemption—CSX Transp., Inc., FD 35328 (STB served Dec. 31, 2009); Ind. Rail Rd.—Trackage Rights Exemption—CSX Transp., Inc., FD 35287 (STB served Sept. 2, 2009); Ind. Rail Rd.—Amended Trackage Rights Exemption—CSX Transp., Inc., FD 35137 (STB served May 22, 2008).

INRD states in its petition in this sub-docket that CSXT agreed to temporarily expand the existing trackage rights to allow INRD to handle loaded and empty coal trains between the Oaktown Mine and the Kentucky Utilities Generating Station in Harrodsburg, Ky., in interline service with other rail carriers.³ That temporary trackage rights agreement, entitled Supplemental Agreement No. 6 and dated September 1, 2016 (Agreement), provides that the expanded trackage rights will expire on December 31, 2017.⁴ INRD argues that granting its petition to allow the trackage rights to expire on that date will promote the rail transportation policy, will be consistent with the limited scope of the transaction, and will not adversely affect the current competitive situation of any shipper.

DISCUSSION AND CONCLUSIONS

Although INRD and CSXT have expressly agreed on the duration of the proposed Agreement, trackage rights approved under the class exemption at 49 C.F.R. § 1180.2(d)(7) typically remain effective indefinitely, regardless of any contract provisions. Occasionally, however, trackage rights exemptions have been granted for a limited time period rather than in perpetuity. See, e.g., Ind. S. R.R.—Temporary Trackage Rights Exemption—Norfolk S. Ry., FD 35965 (Sub-No. 1) (STB served Nov. 25, 2015).

Under 49 U.S.C. § 10502, the Board may exempt a person, class of persons, or a transaction or service, in whole or in part, when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

INRD's trackage rights were already authorized under the class exemption at 49 C.F.R. § 1180.2(d)(7). Granting partial revocation in these circumstances would promote the rail transportation policy by eliminating the need to file a second pleading seeking discontinuance when the agreement expires, thereby promoting rail transportation policy goals at 49 U.S.C. §§ 10101(2), (7), and (15). Moreover, limiting the term of the trackage rights is consistent with the limited scope of the transaction previously exempted. Therefore, the Board will grant the petition and permit the trackage rights exempted in Docket No. FD 36068 to expire on December 31, 2017.

³ INRD's notice of exemption initially described the trackage rights as "local." However, on October 4, 2016, INRD filed a supplement in which it states that, beyond serving the mine at Oaktown, the temporary trackage rights will not allow INRD to provide local service at any points between Sullivan and Oaktown.

⁴ INRD explained in its notice of exemption that because the temporary trackage rights under the Agreement were to be more than a year in duration, the class exemption for temporary trackage rights under 49 C.F.R. § 1180.2(d)(8) was not available.

To provide the statutorily mandated protection to any employee adversely affected by the discontinuance of trackage rights, the Board will impose the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

This action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

It is ordered:

1. The petition for partial revocation is granted.
2. Under 49 U.S.C. § 10502, the trackage rights described in Docket No. FD 36068 are exempted, as discussed above, to permit the trackage rights to expire on December 31, 2017, subject to the employee protective conditions set forth in Oregon Short Line.
3. Notice will be published in the Federal Register on February 9, 2017.
4. This decision is effective on March 11, 2017. Petitions to stay must be filed by February 21, 2017. Petitions for reconsideration must be filed by March 1, 2017.

By the Board, Acting Chairman Begeman, Vice Chairman Elliott, and Commissioner Miller.